

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

La Queta B.

Claimant,

vs.

SAN ANDREAS REGIONAL CENTER,

Service Agency.

OAH No. N 2006120711

DECISION

This matter was heard before Administrative Law Judge M. Amanda Behe, State of California, Office of Administrative Hearings, on January 31, 2007, in Salinas, California.

La Queta B., an unconserved adult, chose to be represented by her mother, Elaine P.

Jack Maitre, Clinical Services District Manager, represented the San Andreas Regional Center.

The case was submitted on January 31, 2007.

PARTIES AND JURISDICTION

Two Fair Hearing Requests were filed in this matter. L.B. (claimant) filed a December 11, 2006, request seeking that the San Andreas Regional Center (SARC) pay the \$347.45 overdraft on her bank account. On the same date Elaine P., claimant's mother, filed a request that SARC pay "back fees and the balance of a check that was deposited item returned (sic) for a back pay (sic) for [claimant's] SSI" in the sum of \$448.50. No evidence suggested that claimant authorized her mother to file the Fair Hearing Request. In consequence, Elaine P. lacked standing to file that document.

At hearing SARC disputed that there is jurisdiction for a fair hearing in that the issues raised by the two Fair Hearing Requests do not concern regional center funds or services. Rather, SARC is merely claimant's representative payee, and the requests seek replacement of personal monies that were handed to her. SARC also noted the contradiction between the Fair Hearing Requests regarding the sum at issue. As SARC has agreed to function as claimant's representative payee, it is appropriate to permit the fair hearing process to address disputes regarding its conduct in that role. The sum in dispute is properly a matter of proof, and not a bar to jurisdiction.

All pre-hearing jurisdictional requirements have been met. Jurisdiction for this proceeding does exist.

ISSUE PRESENTED

Is SARC required to pay the overdraft fees and/or the total of \$205.20 representing a "stop payment" check deposited in claimant's bank account?

FACTUAL FINDINGS

1. Claimant was born April 10, 1988, and is 18 years of age. She is a SARC client with a diagnosis of epilepsy, and described herself as mentally retarded. Historically SARC has provided respite services, and has attempted to deliver Independent Living Skills. The ILS services were initially terminated because claimant's mother did not sign required documents, and later because the vendor could not leave claimant, then a minor, at her home without a parent present. More recently SARC has provided residential assistance to claimant.

2. At the time of claimant's May 19, 2004, IPP she was a minor in the custody of her grandmother, Barbara McM., but kept moving without her grandmother's consent from that home to her aunt and to her mother. The grandmother, who had been claimant's representative payee for SSI payments, was taking steps to limit claimant's contact with her mother. Pursuant to the IPP SARC was appointed claimant's representative payee beginning June 2004 until her guardianship was resolved.

James Collins, SARC's District Manager and the supervisor of claimant's service coordinator Darren Sullivan, has been familiar with claimant's case for four years. Mr. Collins described that as representative payee SARC has no responsibility for what claimant does with her money, although it may help with the disbursement of SSI funds. SARC does not provide its own cash to claimant. Rather, the SSI funds are the consumer's cash which SARC holds in a separate trust account.

SARC does not always disburse all of the SSI funds, but only the monies which the consumer requires or requests. Claimant maintains a checking account at Bank of America in Monterey, and deposits her checks in that account.

3. On September 5, 2006, the Social Security Administration wrote to SARC as claimant's representative payee regarding changes to her SSI for past and future months due to her turning 18 on April 10, 2006. Claimant had already been paid \$1,299.60 for August through September 2006. The letter advised that an additional \$205.20 would be forthcoming, and represented back payments for May through September 2006. On September 5, 2006, \$205.20 was electronically deposited in SARC's trust account for claimant.

As representative payee SARC generally disburses SSI and other funds received on a regular schedule, and not immediately as funds are deposited. On October 3, 2006, SARC issued check #5301736 to claimant for \$649.80 for her SSI monthly benefit. On October 11, 2006, SARC issued check #5302631 to her for \$103.01 for personal expenses.

On October 26, 2006, SARC issued check #5303015 to claimant for the \$205.20 in SSI back payments. The check was mailed to claimant at her grandmother's address in San Diego, where she advised SARC that she was residing.

On November 2, 2006, claimant spoke with Mr. Collins asking that her SSI check be made available for pickup in Salinas because her grandmother kicked her out of the house, and she had returned to the Salinas area. SARC was concerned about claimant's welfare, and alarmed that she might end up in a homeless shelter or on the street. Mr. Collins authorized check #5303433 in the amount of \$200.00 to be picked up at SARC's Salinas office. Claimant picked up and cashed that check, which represented her SSI back payments less \$5.20. SARC issued a "stop payment" on check #5303015, which had been mailed to San Diego.

On November 27, 2006, claimant called SARC after hours and advised the emergency staff that her grandmother, aunt and mother refused to allow her to stay in their respective homes. The grandmother reported to SARC that claimant had been escorted out of her home by the police and could not return, even for the evening.

SARC offered emergency placement at a residential home if she would obey the rules, but claimant refused saying that she did not like it in the past. She also refused a homeless shelter, and decided to stay at a Motel 6 in Marina.

Claimant's cousin forwarded check #5303015 to her in Salinas. On November 28, 2006, claimant deposited check #5303015 for \$205.20 in her checking account. On December 4, 2005, the "stop payment" was effected and Bank of America reversed \$205.20, resulting in a negative balance in her checking account. On December 5, 2005,

an overdraft item fee of \$33.00 was charged against claimant's account¹. Nonetheless, claimant made additional withdrawals on that date resulting in a total negative balance of \$448.50.

4. Claimant contends that SARC is responsible for her overdraft fees, and must also pay her the \$205.20 represented by check #5303015 as well as the \$200 represented by check #5303433. Claimant's contentions are not persuasive.

As representative payee SARC is responsible only for transmitting SSI funds to claimant, which it did in this case. That claimant deposited a stopped check after she obtained a substitute check was not the fault of SARC, and it is not accountable for the related overdraft fees. The overdraft fees are charges imposed on claimant by her bank for using funds in excess of the cleared funds on deposit. Here, claimant withdrew from her account substantially more than the funds she had on deposit. The resulting overdraft fees are not within the control of SARC.

All of the SSI funds, including back payments, forwarded by the Social Security Administration for the benefit of claimant have been disbursed to her. SARC is not holding any money back from claimant. She is not entitled to an additional \$205.20, or any other sum, from SARC. The Lanterman Act does not envision cash payments to consumers such as claimant seeks.

5. The December 4, 2006, IPP Review noted that claimant was living with her mother. To facilitate her transition to full independence she would receive 25 hours per month of ILS services through Partnership for Active Learning Services (PALS) provided her mother did not interfere and the services would be provided out of the home. The IPP noted her need for assistance in money management. SARC was continued as claimant's representative payee for SSI benefits.

LEGAL CONCLUSIONS

1. In the Lanterman Act, the Legislature created a comprehensive scheme to provide "a pattern of facilities and services ... sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life." (Welf. & Inst. Code, § 4501.) The purposes of the scheme are twofold: (1) to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community (Welf. & Inst. Code, §§ 4501, 4509, 4685); and, (2) to enable developmentally disabled persons to approximate the pattern of living of nondisabled persons of the same age and to lead more independent and productive lives in the community." (Welf. & Inst. Code, §§ 4501, 4750-4751; see

¹ On the same date four other overdraft fees of \$33.00 each were charged to claimant's account, apparently related to other stopped or insufficient funds checks which are not relevant to this matter.

generally *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

The Lanterman Act does not provide funds for reimbursing consumers for overdraft fees charged by their banks, or for sums they have expended in excess of their income. At most SARC is authorized to provide services to claimant to assist her in managing her money and realizing financial independence. SARC has provided such ILS services in the past, and has authorized those services in claimant's current IPP.

2. As representative payee for claimant's SSI benefits, SARC is responsible for receiving those funds and disbursing them to claimant. SARC has properly disbursed all of the SSI funds, including back payments, forwarded by the Social Security Administration for the benefit of claimant.

ORDER

Claimant's request that the San Andreas Regional Center pay the \$347.45 overdraft on her bank account is denied

DATED: _____

M. AMANDA BEHE
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Judicial review of this decision may be sought in a court of competent jurisdiction within ninety (90) days.